

party; provided, however, this section shall not apply to pending cases nor in anywise affect the present rights of litigants therein.

Incompetency of parties as to transactions, etc., with deceased.

The portion of this section disqualifying a party from testifying relative to transactions with or statements made by the deceased, applied; the witness being competent, however, to testify to other facts. *Russell v. Carman*, 114 Md. 35; *Lowe v. Lowe*, 111 Md. 115; *Koogle v. Cline*, 110 Md. 607; *Lanahan v. Cockey*, 108 Md. 625; *Zimmerman v. Frushour*, 108 Md. 119; *Smith v. Humphreys*, 104 Md. 288; *Gerting v. Wells*, 103 Md. 631; *Cross v. Iler*, 103 Md. 596; *Shipley v. Mercantile Trust Co.*, 102 Md. 657; *Brewer v. Bowersox*, 92 Md. 575.

A witness may testify to transactions had with or statements made by the testator, etc., if called by "the opposite party." Who is an "opposite party" within the contemplation of this section? *Cross v. Iler*, 103 Md. 596; *Duvall v. Hambleton*, 98 Md. 15; *Whitridge v. Whitridge*, 76 Md. 76. (*Cf.* opinion of the lower court, p. 62, and dissenting opinion, p. 87); *Foley v. Bitter*, 34 Md. 651.

Where a defendant testifies at the first trial of a case, but dies pending an appeal, the plaintiff cannot testify at the second trial to any transaction had with or statements made by such defendant, unless called by the opposite party, or unless the testimony of the defendant is put in evidence on the second trial. *Keyser v. Warfield*, 103 Md. 169.

The admissibility of testimony depends upon the competency of the witness at the time he testifies; hence, the death of a party before the hearing, can not render inadmissible testimony already taken. *Armitage v. Snowden*, 41 Md. 123.

A plaintiff in a suit against administrators is incompetent to prove her marriage to the intestate, either directly or indirectly. *Bowman v. Little*, 101 Md. 295. (*Cf.* dissenting opinion, page 308; and see supplemental opinion, page 317.) See also, *Redgrave v. Redgrave*, 38 Md. 96; *Denison v. Denison*, 35 Md. 381.

Who is a "party to the cause"?

Where a testator's widow as next friend of infant children files a caveat to the will, she is a competent witness, not being a "party to the cause" within the meaning of this section. Object, and method of interpretation, of this section. *Johnson v. Johnson*, 105 Md. 89; *Trahern v. Colburn*, 63 Md. 103.

This section does not exempt a nominal party. *Smith v. Humphreys*, 104 Md. 289.

In a suit by a corporation, the stockholders thereof are not "parties," and hence are competent witnesses. *Downes v. Maryland and Delaware R. R. Co.*, 37 Md. 102.

Corroboration.

The portion of this section prohibiting the corroboration of the testimony of a party to the cause by proof of his own declaration made out of the presence of the adverse party, applied. *Maryland Steel Co. v. Engleman*, 101 Md. 685. *Cf.* *Gill v. Staylor*, 93 Md. 470; *Mallouee v. Duff*, 72 Md. 287. And see *Maitland v. Citizens' Bank*, 40 Md. 559.

Where a party to the cause had not yet testified, there could have been no attempt to corroborate his testimony, and hence, the portion of this section relative to the corroboration of the testimony of a party, had no application. *King v. Zell*, 105 Md. 438.

This section referred to in discussing the admissibility in corroboration of the testimony for the state of a party jointly indicted with the traverser for the same crime, of a sworn statement by such party made thirty-nine days after the commission of the crime. *Lanasa v. State*, 109 Md. 620.

Generally.

Evidence which merely leads up to or explains testimony which is incompetent under this section, is inadmissible. *Worthington v. Worthington*, 112 Md. 142.

History of this section and changes made by the acts of 1902, ch. 495, and 1904, ch. 661. This section does not except a "nominal party." Practice